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Attorney for Movant
7 WELLS FARGO BANK, N.A., ALSO
8 KNOWN AS WACHOVIA MORTGAGE, A
DIVISION OF WELLS FARGO BANK, N.A.,
9 AND FORMERLY KNOWN AS WACHOVIA
MORTGAGE, FSB, FORMERLY KNOWN AS
10 WORLD SAVINGS BANK, FSB, ITS
ASSIGNS AND/OR SUCCESSORS IN
11 INTEREST

12 UNITED STATES BANKRUPTCY COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14
15 In re:
LYZA CHAVEZ

CASE NO.: 10-12372-AJ-13
CHAPTER: 13
R.S. NO.: EAT-1108

17 MOTION FOR RELIEF FROM THE
18 AUTOMATIC STAY

19 Debtor.

20 DATE: December 09, 2010
21 TIME: 09:00 a.m.
22 PLACE: U.S. Bankruptcy Court
23 99 South "E" Street
Santa Rosa, CA

24
25 WELLS FARGO BANK, N.A., ALSO KNOWN AS WACHOVIA MORTGAGE, A
26 DIVISION OF WELLS FARGO BANK, N.A., AND FORMERLY KNOWN AS WACHOVIA
27 MORTGAGE, FSB, FORMERLY KNOWN AS WORLD SAVINGS BANK, FSB, ITS ASSIGNS

1 AND/OR SUCCESSORS IN INTEREST, hereby moves the court for an Order Terminating
2 Automatic Stay for cause pursuant to *11 U.S.C. Section 362(d)(1)* on the grounds hereafter set forth:

3
4 1. On June 24, 2010, the Debtor LYZA CHAVEZ commenced this voluntary Chapter 13
5 case in the United States Bankruptcy Court for the Northern District of California, Santa Rosa
6 Division, Case No. 10-12372-AJ-13. DAVID E. BURCHARD is the duly appointed, qualified and
7 acting Chapter 13 Trustee.

8 2. The Debtor's estate includes real property commonly known as 3412 JACKSON
9 STREET, CLEARLAKE, CA 95422 and legally described as follows:

10
11 THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF
12 CLEARLAKE, COUNTY OF LAKE, STATE OF CALIFORNIA AND IS DESCRIBED AS
FOLLOWS:

13 LOT A, ONE PARCEL COMPRISED OF LOTS 16 AND 17 IN BLOCK 9, AS SHOWN
14 ON THAT CERTAIN MAP ENTITLED, 'PLAT NO. 6 PARKERS ADDITION TO
15 CLEARLAKE HIGHLANDS', FILED IN THE OFFICE OF THE COUNTY RECORDER
OF SAID LAKE COUNTY ON JANUARY 6, 1926 IN BOOK 4 OF TOWN MAPS AT
PAGE 100, PURSUANT TO MERGER, RECORDED APRIL 20, 2006 AS DOCUMENT
NO. 2006010058, LAKE COUNTY RECORDS.

16 APN: 039-496-03

17 3. Movant, its successors and assigns, is the current holder of a ARM Note in the original
18 sum of \$308,000.00 executed on or about April 25, 2007 by the Debtor LYZA CHAVEZ in favor of
19 WORLD SAVINGS BANK, FSB. The Note is secured by a First priority Deed of Trust against said
20 real property recorded on May 03, 2007, as Instrument No. 2007010872 in the Office of the County
21 Recorder of Lake County, California.

22
23 4. The original loan amount was payable with interest at the initial rate of 7.60 per annum in
24 monthly principal and interest installments of \$1,036.72 each, commencing June 15, 2007 and
25 continuing thereafter each calendar month through April 15, 2049 at which time the entire unpaid
26 principal balance plus accrued interest shall be due and payable. The interest rate and monthly
27 payment are subject to periodic adjustments as specified in the Note.

1 5. The Debtor defaulted in his monthly payment obligations prior to bankruptcy filing, and a
2 Proof of Claim itemizing the Debtor's pre-petition default has been or will be filed. Movant has
3 commenced foreclosure proceedings against the real property by recording a Notice of Default on
4 August 28, 2008. There is no foreclosure sale date currently scheduled.
5

6 6. The Debtor has materially defaulted in his obligation by failing to make regular
7 post-petition monthly mortgage installments totaling \$3,550.62 through and including October 15,
8 2010. Another post-petition installment of \$1036.72 will become due on November 15, 2010. In
9 addition, Movant has incurred attorney fees and costs totaling \$800.00 to prosecute this relief from
10 stay motion. These legal expenses are recoverable as additional obligations payable under the ARM
11 Note and Deed of Trust.
12

13 7. The Debtor's material default constitutes cause to terminate the automatic stay under *11*
14 *U.S.C. Section 362(d)(1)* so that Movant can progress enforcement of its contractual default
15 remedies to foreclose upon and recover possession of the real property.
16

17 WHEREFORE, Movant prays for an Order as follows:
18

19 1. For an Order Terminating Automatic Stay to allow Movant to enforce its state law
20 foreclosure remedies against the real property described above and to allow the successful bidder to
21 recover possession of said real property in accordance with applicable state laws.
22

23 2. That the Order Terminating Automatic Stay be binding and effective notwithstanding any
24 conversion of this case to a case under any Chapter of *Title 11* of the *United States Code* without
25 further notice, hearing or court order.
26

27 3. That the Order Terminating Automatic Stay be deemed effective and enforceable
28 immediately upon its entry with no stay on its enforcement as prescribed by *Rule 4001(a)(3)* of the

1 *Federal Rules of Bankruptcy Procedure.*

2
3 4. For such other relief as the Court deems proper.

4 BARRETT DAFFIN FRAPPIER TREDER
5 & WEISS, LLP

6 Date: November 16, 2010

7 By: /s/ MARISOL A. NAGATA
8 MARISOL A. NAGATA
9 Attorney for Movant
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